

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
CIVIL DOCKET NO.: 5:11CV55-V**

ROSE CLEMONS POWELL, )  
Plaintiff, )  
                        )  
                        )  
v.                     )         **O R D E R**  
                        )  
                        )  
TONY KELLER, et al., )  
Defendants. )  
                        )

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**THIS MATTER** is before the Court on its own motion pursuant to 28 U.S.C. §455(b)(5)(i), which mandates recusal where the assigned judge is named as a “party” in the “proceedings.” *See* 28 U.S.C. §455(b)(5)(i)(judge “shall” disqualify self where he is a party to the proceeding); Akers v. Weinshienk, 350 Fed. Appx. 292 (10<sup>th</sup> Cir. 2009) (*unpublished*); and Davis v. Kvalheim, 261 Fed. Appx. 231 (11<sup>th</sup> Cir. 2008) (*unpublished*) (*citing United States v. Patti*, 337 F.3d 1317, 1321 (11<sup>th</sup> Cir. 2003) (recusal under §455(b) is mandatory and cannot be waived)). Indeed, Plaintiff names the undersigned as one of several federal government employee defendants.<sup>1</sup> Moreover, because the term “proceedings” is defined broadly by statute to include “pretrial, trial appellate review, *or other stages of litigation*,” it is appropriate for another district judge to conduct the initial review of this proposed civil action under 28 U.S.C. §1915(e)(2)(B)(i) and (ii).

**IT IS, THEREFORE, ORDERED** that recusal is required pursuant to 28 U.S.C. §455(b)(5)(i). Accordingly, the Deputy Clerk is directed to reassign this matter pursuant to the governing Case Allocation Order for the Statesville Division.

Signed: May 10, 2011



Richard L. Voorhees  
United States District Judge



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<sup>1</sup> This filing is related to the following actions prosecuted within the Western District of North Carolina: 5:99CR12-V; 5:03CV160-GCM; 5:07CV121- GCM; 5:09CV4-GCM; 5:09CV126-GCM; and 5:11CV138-RJC.